

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Curtis Jerome Lemon,	)	Civil Action No.: 8:08-cv-1055-RBH
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
State of South Carolina; Warden,	)	
McCormick Correctional Institution;	)	
	)	
Respondents.	)	
_____	)	

Petitioner, proceeding *pro se*, brought this action pursuant to 28 U.S.C. § 2254. Currently pending before the court is Respondents' [Docket Entry #14] motion for summary judgment filed on August 15, 2008. This matter is before the court with the Report and Recommendation [Docket Entry #26] of Magistrate Judge Bruce Howe Hendricks filed on January 23, 2009.<sup>1</sup>

In her Report, the Magistrate Judge recommended that Respondents' motion for summary judgment be granted and the matter be dismissed with prejudice. Petitioner timely filed Objections [Docket Entry #33] to the Magistrate Judge's Report and Recommendation on February 19, 2009.

**Standard of Review**

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged

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<sup>1</sup> This matter was referred to Magistrate Judge Hendricks pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Civil Rules 73.02(B)(2)(c) and (e).

with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

### **Discussion**

Petitioner raised the following eight grounds for relief in the instant habeas corpus petition: 1) Ground one - ineffective assistance of counsel for failing to object to the trial court's submission of voluntary manslaughter as a lesser included offense; 2) Ground two - ineffective assistance of counsel for failing to object to and preserve for appeal the trial court's failure to instruct the jury on the voluntariness of applicant's statements; 3) Ground three - ineffective assistance of counsel for failing to request that the trial court issue a more complete charge on the law in response to the jury's request; 4) Ground four - ineffective assistance of counsel for failing to object to the trial court's *Allen* charge absent any indication such a charge was necessary; 5) Ground five - ineffective assistance of counsel for failing to object and preserve for appeal the trial court's alleged improper admission into evidence of the applicant's purchase and use of crack cocaine; 6) Ground six - ineffective assistance of counsel for failure to object to the Solicitor's alleged improper bolstering of state witnesses

Scott, Harris, and Cromwell on direct examination; 7) Ground seven - ineffective assistance of counsel for failure to object to the Solicitor's alleged improper bolstering of state witness Cromwell by the use of his prior consistent statements; and 8) Ground eight - ineffective assistance of counsel for failure to present favorable witnesses and evidence.

The Magistrate Judge recommended that grounds one, three, four, six, and seven be dismissed as procedurally defaulted. The Magistrate Judge recommended that grounds two, five, and eight were due to be denied on the merits. The court has reviewed the Magistrate Judge's Report and the applicable law and finds that the Magistrate Judge correctly applied the law to the facts of this case. The court has reviewed Petitioner's objections and finds that they lack merit.

### **Conclusion**

For the reasons stated above and by the Magistrate Judge, the court overrules Petitioner's objections and adopts and incorporates by reference the Report and Recommendation [Docket Entry #26] of the Magistrate Judge. Respondent's [Docket Entry #14] motion for summary judgment is **GRANTED**. This case is hereby **DISMISSED with prejudice**.

**IT IS SO ORDERED.**

March 19, 2009  
Florence, South Carolina

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge